SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

IN THE ALL SCOTLAND PERSONAL INJURY COURT

[2018] SC EDIN 68

PN192/18

JUDGMENT OF SHERIFF KENNETH J MCGOWAN

in the cause

LESLIE O'DONNELL

Pursuer

against

(FIRST) LISA SMITH AND (SECOND) ROYAL & SUN ALLIANCE INSURANCE PLC

Defenders

Pursuer: Markie; Road Traffic Accident Law, Solicitors
Defenders: Richardson; BTO Solicitors

Edinburgh, 18 December 2018

NOTE

Introduction

[1] This case concerns a road traffic accident as a result of which the pursuer was injured.

[2] I heard evidence from the pursuer; his two friends, John Steele and William Gateley; and the first defender.

[3] A number of evidential and factual matters bearing on quantum were agreed between the parties: joint minutes, numbers 18 and 19 of process. I was referred to the following authorities/sources:

> Judicial College Guidelines ("JCG"), chapter 7, sections A, H, L and M;
> The Highway Code, paragraphs 126, 163 and 168;

Charlesworth & *Percy on Negligence*, 14th edition, chapter 11;
Ali v *D'Brass* 2011 EWCA Civ 1594;
Bellingham v *Todd* 2011 CSOH 74;
Brown & Lynn v *Western SMT Company* 1945 SC 31;
Clark v *Royal Borough of Kensington and Chelsea,* unreported, 2006, Brentford County Court;
Dorning v *Personal Representative of Paul Rigby* 2007 EWCA Civ 1315;
Elizabeth v *MIB* 181 WL 187823;
McFarlane v *Drew*, unreported, 2003 Bristol County Court;
McKenzie v *Asda Group Limited* 2018 CSOH 12;
Paterson v *Paterso*n 2012 CSOH 183;
Ross v *Harper* 2003 Rep. L. R. 122;
Sadler v *Filipiak & Another* 2011 10 WL UK 190;
Thinarty v *Kavanagh*, unreported, 2008 Manchester County Court;
Valentine v *Central SMT Co* 1951 SLT (Sh Ct) 19;
Welsh v *O'Leary* 1998 WL UK 145; and
Whillis v *Bodman*, unreported, 2003 Truro County Court.

[4] Having considered the evidence and submissions, I made the following findings in fact.

Findings in fact

[5] The pursuer was born on 2 July 1959. He has been a motorcyclist for several decades. He has travelled extensively by motorcycle throughout Europe and elsewhere. He is friends with John Steele and William Gateley, whom he has known from school. He shares with them an interest in motorcycling. They too are both very experienced motorcyclists. Mr Gateley is a serving police officer. At one stage in his career, he was trained in, and served as, a traffic officer. He underwent appropriate police training to qualify him to drive both cars and motorcycles in his policing capacity.

[6] On the morning of 29 May 2016, the pursuer, Mr Steele and Mr Gateley were travelling to Scotland for a motorcycle tour which was to last a few days. They motorcycled from Omagh to Larne where they waited for, and then took, the ferry to Stranraer. They

then motorcycled north, stopping at one stage for a break. They made their way through Glasgow and headed north on the A82 road. Their destination was Oban.

[7] At about 12.55pm, the first defender was driving a Peugeot car north on the A82 at Loch Lomond. Further ahead of her car was a line of other vehicles.

[8] As they travelled north at about 55-60 miles per hour, the pursuer, Mr Steele and Mr Gateley were gradually gaining on the first defender's car.

[9] Just south of Stuckgowan Cottage, the pursuer, Mr Steele and Mr Gateley caught up with the first defender's car. The pursuer was in the lead. He took up position about 50 m – 60 m behind the first defender's car and slowed to about 50 mph.

[10] He was in an appropriate road position, approximately in line with the rear offside wheels of the first defender's car (the 'following position': see diagram at 5/2/25 of process). Mr Steele was about 50 m or so further back and in a road position closer to the nearside. Mr Gateley was in third position, about a further 50 m behind Mr Steele and roughly in the same road position as the pursuer.

[11] At this area, as one heads north, the road is relatively straight, followed by a gentle right-hand bend and then a straight leading towards Tarbet itself.

[12] The pursuer was considering overtaking the first defender's car. He could see the road ahead. The road and weather conditions were good.

[13] In the meantime, the first defender had become aware of the approach of the pursuer, Mr Steele and Mr Gateley on their motorcycles. She became apprehensive. She decided to slow down. She braked, but did so too harshly and her car came to a sudden stop. When the pursuer realised that the first defender's car was slowing he began to brake. The first defender's car performed what appeared to be an emergency stop. It came to a

complete halt. The pursuer braked hard but was unable to avoid his motorcycle colliding with the rear of the first defender's car.

[14] As a result of the collision, the pursuer was injured. He suffered a soft tissue injury to his neck, aggravating an underlying degenerative condition; a displaced distal radial fracture to his right wrist; and a displaced lateral tibial plateau fracture to his right knee. He underwent hospital treatment. After his hospital treatment in Scotland the pursuer was allowed to return home into the care of his wife in Ireland. He was significantly immobilised for a number of months. Thereafter, he remobilised and gradually recovered. He underwent physiotherapy.

[15] The neck pain became intermittent after about six months. It is likely that any neck symptom continuing after about two years post injury are attributable to the underlying degenerative change, rather than the accident.

[16] The pursuer's right wrist was fractured in the accident and he underwent an internal fixation using a plate and screws. His wrist gradually improved in terms of strength, range of motion and function over time and his recovery has now reached a plateau. He has regained a good range of movement and strength in his right wrist but does feel that it gets uncomfortable after extended activity. He has a mild weakness in the right wrist which is likely to persist long-term.

[17] The pursuer's right tibial plateau (knee) was fractured. He was initially treated with a long leg plaster. The fracture has healed with minimal displacement. The pursuer has mild aching, particularly if he is active or standing for a prolonged time. This discomfort is attributable to the accident and not to his pre-existing arthritis. It is unlikely that he will develop secondary arthritis in the knee, the chances of that being around 20% long-term. Should this arise, there is a 10-20% risk he may require a knee replacement.

[18] The pursuer was unable to work for about three months. About seven months *post* injury he was able to carry out his normal workload full time. The pursuer was limited in his ability to self-care for the initial three months and in his ability to engage in heavier domestic tasks over the initial seven months. In the initial period, his wife had to give him assistance with personal care such as washing and dressing. His wife also had to assume an increased domestic role with respect to housework, shopping and heavier domestic chores for about 6-7 months.

[19] During his recovery, the pursuer's wife provided services to him. These are properly valued at £3,500 inclusive of interest at the date of proof. The pursuer also sustained losses in the form of damage to his motorcycling clothes and equipment which had to be replaced at a cost of £2,200.

Submissions for the pursuer

[20] The evidence of the pursuer, Mr Steele and Mr Gateley should be accepted. They were all experienced motorcyclists. In particular, Mr Gateley had police experience as a motorcyclist. It was evident that they were all responsible and careful motorcyclists. The evidence was that prior to the collision the pursuer was about 50-60 m behind the first defender's car. That was an appropriate distance according to Mr Gateley. The pursuer's lateral position on the road did not matter. Likewise it did not matter whether he was or was not considering overtaking. There was no evidence that he was in any respect to blame. The test was whether it could be said that the manner in which he was driving had fallen below the standard of a reasonably competent motorcyclist.

[21] The first defender's own evidence called into question her actions. On the evidence, her vehicle had stopped before the collision occurred. Her evidence was exactly the same as

the evidence of the pursuer and his witnesses – namely that she had carried out an emergency stop. The foregoing should lead to a finding that primary liability was established.

[22] There were no strict rules about the distance that a vehicle following another vehicle should stay behind the one in front. The obligation on the following driver was:

> "… so far as reasonably possible, to take up such a position, and to drive in such a fashion, as will enable him to deal successfully with all traffic exigencies reasonably to be anticipated: but whether he has fulfilled this duty must in every case be a question of fact, just as it is a question of fact whether, on any emergency disclosing itself, the following driver acted with alertness, skill and judgement reasonably to be expected in the circumstances": *Brown and Lynn* v *Western SMT Company Limited*, at page 36.

[23] There was no rule that the occurrence of a collision by one vehicle running into the back of the other automatically gave rise to an inference of negligence on the part of the following driver: *Elizabeth* v *Motor Insurers Bureau*; *Welch* v *O'Leary*.

[24] So far as contributory negligence on the part of the pursuer was concerned, the onus was on the defender to prove this. On the evidence, it had not been established. The defenders' position seemed to be that the pursuer had either been too close or that in the course of braking he should have adopted an evasive manoeuvre and gone on either side of the first defender's car.

[25] On the first point there was no evidence that the pursuer was too close to the first defender's car. On the evidence he was 50-60 m behind it. That was a reasonable distance. A finding that the pursuer was too close could only be done as a matter of inference, but that was not a reasonable inference on the evidence. With regards to the second point, the pursuer faced "the agony of the moment": *Dorning* v *Personal Representative of Rigby*. His response to the situation he faced should not be analysed too closely or weighed in too fine a balance.

[26] If there was found to be any contributory negligence in this case, the preponderance of blame should still lie with the first defender: *McKenzie* v *Asda Group*.

[27] Turning to quantum, the neck injury fell within JCG, Chapter 7, (A)(iii) (moderate injuries). The wrist injury on its own with ongoing current difficulties would be properly valued at about £11,000: JSG, Chapter 7, (H)(c) (less severe injuries). The knee injury fell somewhere between JCG, Chapter 7, (M)(a)(ii) or (iii) (severe injuries).

[28] Services were agreed at £3,500. The damaged clothes had to be replaced at a cost of £1,000 and the damaged paniers at a cost of £1,200.

[29] There was now no claim for disadvantage on the labour market or loss of income.

[30] It was accepted that in valuing the claim for solatium, it was not proper to disaggregate the injuries, make a separate award for these and then tot them up – there would have to be some reduction to arrive at the overall correct figure.

[31] An appropriate overall figure would be £41,800. 80% thereof should be attributed to the past with interest thereon at 4%. That would give a figure inclusive of interest to date of proof of £46,037.

[32] Services inclusive of interest were valued at £3,500. The loss of equipment was £2,200 with interest at 8% from the date on which those replacement expenses were incurred.

Submissions for the defender

[33] The defenders should be absolved or, in the alternative, if liability was established, any award should be reduced by 70% to take account of the pursuer's contributory negligence.

[34] There were questions about the pursuer's credibility. For example, his evidence about conducting a weaving manoeuvre while he was in position behind the first defender's car was not spoken to by any other witness; and his contradiction of the content of two of the doctors' letters was strange.

[35] Mr Steele and Mr Gateley's evidence should be regarded with caution since they are friends with the pursuer. There was no issue about the first defender's credibility or reliability.

[36] Reliance was placed on the pursuer's own evidence. The pursuer had accepted that a bike can use road space more easily than a car. He had accepted that he would not be able to see every hazard that might be ahead. His evidence was that the impact had been at 40 mph. His position on the road could be criticised. He had accepted that he could have gone over the white line and crossed onto the other side of the road if so required.

[37] Mr Gateley had said that the pursuer was about 50 m from the rear of the first defender's car. He was in turn 100 m behind the pursuer. He had accepted that an overtaking manoeuvre could arguably have been carried out safely and the pursuer could have gone round the first defender's car.

[38] Mr Steele's evidence was that the pursuer was doing about 55 miles per hour whereas the pursuer said he was doing about 50 miles per hour. Mr Steele had accepted that there were escape routes available.

[39] The first defender accepted that she had braked but had not been trying to do so sharply. It was accepted that she had not carried out an appropriate braking manoeuvre.

[40] On the evidence, the pursuer should have been able to pass the first defender's car on the offside or nearside. Reliance was placed on paragraph 126 of the Highway Code.

The braking distances provided were minima. To drive any closer than these distances to a vehicle in front amounted to negligence.

[41] The apprehension felt by the first defender was a relevant circumstance.

[42] If the court did not agree with the submission that the accident was entirely the pursuer's fault, there was nevertheless contributory negligence. In assessing the appropriate apportionment, blameworthiness and causative potency should be taken into account. The pursuer was too close to the first defender's car and travelling too fast.

[43] If the pursuer had left the appropriate amount of room, the accident may have been avoided.

[44] Also of relevance was the fact that the pursuer's motorcycle plainly collided closer to the nearside than the offside of the first defender's vehicle.

[45] It was appropriate for the court to conclude that the pursuer was more to blame for this accident than the defender.

[46] If he had altered his position on the roadway, he could have missed the first defender's vehicle entirely. There was a reasonable escape route. This case fell somewhere between the circumstances of *Ali* v *D'Brass* and *Bellingham* v *Todd.*

[47] Turning to quantum, the 10% uplift mentioned in the guidelines should not be added because that was to deal with the particular circumstances of shortfalls of recoverable costs in England.

[48] The pursuer's neck injury had caused him problems for six months and then returned to how it had been before. On its own that would attract an award of about £4,700. An appropriate award for the wrist injury would be £10,500 and for the knee injury £21,000. That gave a total of £36,200 which was too high. The pursuer had been able to return to work and motorcycling. He suffered little restriction now. There was a small risk of

arthritis. The appropriate figure would be about £30,800 with two thirds to the past and interest at 4% to the date of proof. The award for miscellaneous costs should be restricted to £1,000 given the absence of vouching.

Grounds of decision

Breach of duty by the first defender

[49] On the first defender's own evidence it is clear that she was in breach of duty. She said that she had become apprehensive about the presence of the motorcycles. She gave no reason for that and there was no criticism of the manner in which the motorcycles were being driven. I accept the evidence that the pursuer was about 50-60 m behind her and that Mr Steele and Mr Gateley were further back again. Accordingly, in my view she had no legitimate reason to be apprehensive.

[50] Looking at the circumstances as a whole, there was no reason whatsoever for her to brake. There was nothing ahead which gave rise to any requirement to do so and while slowing down a little by removing her foot from the accelerator, to allow the pursuer to overtake if he wished to do so, may have been legitimate, a sharp braking manoeuvre was inappropriate. The clear advice in the Highway Code is to drive steadily without sudden changes of speed or direction. The first defender admitted that she braked too harshly and her car came to a stop. In my view, that is entirely consistent with the evidence of the pursuer and his two motorcycling companions.

[51] Accordingly, I find that the first defender was in breach of her duty towards other road users, including the pursuer, and that her negligence caused the accident.

Contributory negligence

[52] The starting point is whether the pursuer was blameworthy in the sense of driving in a careless or negligent manner.

[53] I was referred to the case of *Brown & Lynn* v *Western SMT Company Limited*. Its status as a relevant authority was not challenged by Mr Richardson. Accordingly, I proceed on the basis that the analysis of the law set out by the majority in that case is correct and I respectfully adopt and agree with it.

[54] In that case, there was no suggestion of any fault on the part of the driver of the front vehicle, it having been brought to a halt very quickly to avoid a pedestrian who had unexpectedly stepped out in front of it.

[55] Beyond that, I think only two short points need to be taken from it. Firstly, there is no single rule which specifies the distance which should separate two vehicles travelling, one behind the other; and the following driver is expected to drive in such a fashion as will enable him to deal successfully with all traffic exigencies reasonably to be anticipated. The question as to whether he has fulfilled this duty will in every case be a question of fact: page 35 (foot) – page 36 (top). Secondly, the rule of reasonable care cannot be elevated to a counsel of perfection which requires a following vehicle to give a leading vehicle so wide a berth that every possible risk, however remote, would be amply covered: page 37.

[56] From this, I proceed on the basis that the mere fact of one vehicle having collided with the rear of another vehicle in front does not of itself give rise to the presumption that the driver of the following vehicle has been negligent (though it will undoubtedly be a factor and may, in many cases, be a decisive one). It is always necessary to look at the whole of the relevant circumstances.

[57] Reliance was also placed on Rule 126 of the Highway Code. It gives a stopping distance at 50 miles per hour of 53 m (175ft). These distances are said to be "a general guide dependent on other factors such as weather conditions etc". The rule then goes on to state:

> "Stopping distances. Drive at a speed that will allow you to stop well within the distance you can see to be clear. You should:
> - Leave enough space between you and the vehicle in front so that you can pull up safely if it suddenly slows down or stops. The safe rule is never to get closer than the overall stopping distance (see typical stopping distances diagram, shown above)
> - Allow at least a two second gap between you and the vehicle in front on roads carrying faster moving traffic…".

[58] On behalf of the defenders, Mr Richardson argued that on the evidence, the pursuer was driving too close, given the speed at which he was travelling. I am not persuaded that that is correct.

[59] Drivers cannot necessarily be aware from moment to moment of their precise speed, though plainly that is something that they should be monitoring from time to time. In addition, they cannot be over precise about distances. (Indeed, my experience is that when it comes to estimating distances, witnesses find it very difficult to do so with any precision.)

[60] Accordingly, the best that can be said is that the pursuer was travelling at about 50-55 miles per hour and that he was about 50-60 m behind the first defender's car. That is what he, Mr Steele and Mr Gateley all said and I accepted the weight of their evidence. It was not contradicted by the first defender's evidence. She simply said that she was aware of the motorcyclists behind her. She did not suggest that they were too close.

[61] It is possible that other information about the nature and circumstances could contradict the eyewitness evidence about matters such as distances, speed or both. For example, in some circumstances, evidence about the weight of a collision; or other physical data such as skid marks could be used to demonstrate that eye witnesses' recollections (or estimates) were faulty.

[62] But in this case, no such evidence was presented. Absent that, I accept the eyewitness testimony. On that basis, the pursuer was complying with the requirements of the Highway Code both in relation to stopping distances and in relation to the so called "two second rule". A vehicle travelling at 55 mph would cover [just under] 50 m in two seconds[1]. Given the type of road (i.e. one carrying faster moving traffic), that was reasonable.

[63] Accordingly, in relation to his speed and distance behind the first defender's car, I find that the pursuer was not at fault.

[64] The question then may be, if he had left this distance, why was he unable to avoid the resultant collision?

[65] In this case, there was no evidence about how much time would have been likely to have elapsed between the first defender's car's brake lights coming on (that being the first warning the pursuer would have had of it slowing down) and the collision.

[66] So I am left with no evidence as to how much time would have been available to the pursuer to react to the first defender's car slowing and then stopping.

[67] In any event, in my view it would not be correct to assume that the pursuer's response (i.e. thinking time followed by braking time) should necessarily have started as soon as the first defender's brake lights came on.

[68] On the pursuer's own evidence, whilst doing a steady 55 miles per hour, he had been gradually closing on the first defender's car, which was doing about 50 miles per hour, for about one mile. He thought he could overtake, but he was not fully committed to doing so. He was carrying out an assessment, which involved him looking for hazards such as junctions and oncoming traffic. His evidence was that he moved from a "following

[1] A vehicle travelling at 55mph would cover 55 x 1760 = 96,800 yards in one hour. That is 96,800 / 3,600 = 26.89 yards per second. There are 0.91 metres in a yard. So the vehicle would cover 26.89 x 0.91 = 24.59 metres per second. So over 2 seconds, the distance covered would be 24.59 x 2 = 49.17 metres

position" to a "ready position" which meant that he was slightly closer towards the centre line of the road and was preparing to accelerate past.

[69] Drivers must pay appropriate attention to a variety of matters. So the pursuer cannot be expected to have been exclusively focussed on the brake lights of the first defender's car at all times. Moreover, even when these lights came on, there was no reason for the pursuer to think that the first defender was going to come to a complete halt and do so suddenly.

[70] Once the first defender's car began to slow, with every passing second the pursuer was getting closer to it, so even a short delay in his reaction would have compromised his ability to stop in time or take some other avoiding action.

[71] Accordingly, in my view, it cannot be inferred from the fact of the pursuer being unable to stop before colliding that he was closer to the first defender's car than suggested by the eye witness evidence.

[72] It was also suggested by Mr Richardson that that the pursuer should have managed, in any event, to avoid the collision by taking avoiding action.

[73] I should say at this point that I do not think that it is likely that the pursuer's estimate as recorded in the medical records about the speed of his motorcycle at the point of collision can be accurate. As with estimating distance, estimating speed is not easy for witnesses. No doubt it was a relatively heavy collision and was probably very frightening and sudden. Nevertheless, it appears to me that if the pursuer's motorcycle, which was a large and heavy one, had collided with the first defender's stationary car at a speed of 30-40 miles per hour, the physical results of this accident would have been significantly worse. Accordingly, whilst I do not suggest that this was a minor collision, I think it is more likely that the speed at the point of impact was considerably lower than 30 – 40 mph.

[74] In any event, the evidence was that the first defender's car stopped very quickly. The pursuer said that he had no time to react. I accepted that evidence. He was faced with an emergency situation. He sought to bring his vehicle under control but regrettably was not entirely successful in stopping. In my opinion, it is to go too far to suggest that he should have been able to proceed into the southbound lane while braking or into the verge at the nearside of the car: *Dorning*, paragraph 58.

[75] So to summarise, it is clear that the first defender was at fault. It has not been proved that the pursuer was at fault. In these circumstances, the cause of the accident was the first defender's negligence and no case of sole fault or contributory negligence is made out.

[76] Lest I am wrong in that, it is appropriate that I state briefly my views on the issue of contributory negligence had it arisen.

[77] There are two preliminary points. The assessment of contributory negligence in any given set of circumstances is (i) a matter of discretion and (ii) "fact sensitive".

[78] Thus, it is doubtful if the citation of other cases has much value at all, given that they can be no more than examples of how another court in another case has exercised that discretion.

[79] That is so *a fortiori* where the circumstances of cases cited turn out to have only a superficial similarity to the case at hand.

[80] So while it is true that both *Ali* and *Bellingham*, relied on by Mr Richardson, concern one vehicle colliding with another vehicle in front which had either slowed or come to a stop, a cursory examination of the facts of these cases demonstrates that they are materially different from the present case.

[81] In *Ali*, the following vehicle (who was the respondent in a claim brought by the driver of the vehicle in front) was found, on appeal, to be 60% to blame. But that

apportionment proceeded on a finding in fact that the following vehicle had been only half a car length behind the vehicle with which it collided while travelling at a speed of between 30 and 40 miles per hour. As the Appeal Court said in that case, that was "patently negligent".

[82] In *Bellingham*, the rider of a motorcycle which collided with the rear of a van in front of it when the latter braked was found to be 80% to blame. But in that case there was a finding that the motorcycle was only between 5m and 10m behind the van when its speed indicated that a safe distance of between 34-44m. The court accepted that the motorcyclist's driving was appropriately described as "tailgating", verging on the reckless and that he was far too close to the vehicle in front.

[83] Mr Richardson sought to persuade me that the present case fell somewhere between those two. In my view it is clear that they do not because in both cases, contrary to what I have found in this case, the following vehicle was far too close to the vehicle in front and that was reflected in the drivers thereof being held substantially to blame.

[84] Nevertheless, taking those cases as a starting point – albeit a starting point which shows what the apportionment should not be – I have concluded that if, contrary to my conclusion, it can be said that the pursuer was driving too close to the first defender's car or should otherwise have avoided a collision, and that he was blameworthy in that respect, the appropriate apportionment would be a 20% reduction in his award of damages.

Quantum

[85] The nature of the injuries sustained by the pursuer, and the terms of the medical report were agreed. I accepted the pursuer's account of the effect of the injuries on him. I found the pursuer to be very matter of fact, if not understated, in his evidence. The findings in fact set out above are referred to.

[86] It was common ground that an award of solatium was not properly arrived at by looking at awards for the various individual injuries and then simply adding these up. I shall return to this. Nevertheless, as a starting point, it is helpful to look at the awards that might properly be made for the injuries sustained individually rather than collectively. I was referred to the relevant sections of the JCG, 14th Edition. It was accepted that in so far as awards in Scotland are concerned, the 10% uplift which derived from a decision in England in the case of awards of damages to compensate for irrecoverable costs, should not be applied.

[87] So far as the wrist injury is concerned, my view is that the correct range category is to be found at the lower end of JCG chapter 7, H(c). I conclude that an award of about £10,000 would be appropriate had I been looking at that injury on its own.

[88] So far as the knee is concerned, I think that that correct category is found in JCG, Chapter 7(M)(a)(iii). In my opinion the appropriate award for that injury on its own would be around about £30,000.

[89] Finally, so far as the neck is concerned, I think that the appropriate category is towards the upper end of JCG, Chapter 7(A)(c)(i) and I would award around £5,000.

[90] It is necessary then to take a step back and assess the appropriate award, applying what might be described as the "totality" principle. In my view, two elements are relevant to that exercise. First, there is the need to take into account the 'overlap' in pain and inconvenience. That cannot be a scientific exercise, but in broad terms, it is clear that there was a material overlap due in particular to the wrist and knee injuries. Second, it is useful to bear in mind the level of awards made in respect of the dominant injury alone, which in this case was the one to the knee. Having done that, and starting with a total of £45,000 based on

the injuries looked at individually, I have concluded that the appropriate award of solatium in this case would be £38,000.

[91] I attribute 80% of that to the past. Interest on the past element will run at the rate of 4% per annum from the date of the accident to the date hereof.

[92] Parties were agreed that the pursuer's claim for services in terms of section 8 of the 1982 Act was agreed at £3,500 inclusive of interest to the date of proof. I do not add further interest since it is *de minimis*.

[93] In my opinion, the pursuer is entitled to be compensated for the loss of other pieces of clothing and equipment. It was not suggested that replacement of those was inappropriate. I did not have precise dates for the replacement of them but I presume on the basis that they would probably not be replaced until the pursuer began motorcycling again. Since I do not have precise information on that I shall award him interest at the rate of 8% per annum on those outlays from the first anniversary from the date of the accident to date.

[94] Thus, my award may be summarised as follows:

	£
Solatium	38,000.00
Interest thereon (£38,000.00 x 80% x 4% x 2.55 years) =	3,100.80
Services (including interest)	3,500.00
Clothing and paniers	2,200.00
Interest thereon (£2,200 x 8% x 1.55 years)	272.80
Total to date of decree	£47,073.60

[95] In the meantime, as requested by parties, I reserve all questions of expenses.

Disposal

[96] I shall pronounce an interlocutor giving effect to my decision as follows: finding the defenders liable to the pursuer in damages; granting decree against the defenders for payment to the pursuer jointly and severally for the sum of £47,073.60 inclusive of interest to the date of decree; and reserving all questions of expenses.

[97] If parties are unable to resolve expenses by agreement, my clerk should be contacted so that a hearing can be arranged.